

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1096 OF 2005

Mrs.Poonam Mahesh Ketkar ..Appellant

Vs.

Barbar Ship Management Ltd.
and Ors. ..Respondents

Mr.P.K.Dhakephalkar for Appellant
Mr.Girish Godbole for Respondent No.5

CORAM: DR.S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI, JJ.
DATE : DECEMBER 23, 2005

P.C.

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondent No.5.

2. Brief facts are that the Appellant being the wife of one Mr.Mahesh Ketkar who was employed as a Chief Officer in the Respondent No.1 Shipping Company, appears to have died on high-seas on 18.9.1997 in the sense that on that day, said Shri.Mahesh Ketkar was reported to be missing from high-seas at 20.15 hours. Respondent Nos.1 to 4 have already deposited a sum of Rs.24 lakhs payable

on the death of said Shri.Mahesh Ketkar. Now the dispute is between the Appellant and the Respondent No.5 who is the Appellant's mother in law. The contention of Respondent No.5 is that said Shri.Mahesh Ketkar executed a Will and as per the said Will, the entire amount would come to the Respondent No.5 and not to the Appellant.

3. The Appellant being the original Plaintiff, had filed Special Civil Suit No.2008 of 1998 before the learned Civil Judge S.D. at Pune. It appears that before the said Civil Judge S.D., Respondent No.5 herein i.e. original Defendant No.5, had taken out an Application under Order VII Rule 11 of Civil Procedure Code for rejection of the plaint. The learned Civil Judge S.D. by his order dated 14.8.2003 relying on the provisions of Section 108 of the Evidence Act, came to a conclusion that on the day when the plaint was lodged, seven years had not elapsed and as such, the Plaintiff had failed to establish that the said Shri.Mahesh Kektar had died and accordingly, the plaint was rejected.

4. Now after hearing the counsel for the parties for sometime, Mr.Godbole, the learned counsel appearing for the Respondent No.5 fairly states

that without going into the merits and de-merits of the impugned order dated 14.8.2003, as on date, more than seven years have elapsed and as such, he has no objection to the impugned order of rejecting the plaint is set aside and the said Special Civil Suit No.2008 of 1998 to restore to file so as to enable both the Appellant and Respondent No.5 to contest the matter strictly on its own merits in accordance with law.

5. In the facts and circumstances, we restore the aforesaid Special Civil Suit No. 2008 of 1998 on the file of the learned Civil Judge S.D. at Pune, to be heard strictly on its own merits in accordance with law as expeditiously as possible preferably on or before 31.12.2006.

6. Appeal stands disposed of accordingly.

[DR.S.RADHAKRISHNAN, J.]

[SMT.V.K.TAHILRAMANI, J.]